

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
LifePoints Ministries	)	
	)	CSR 6292
Video Programming Accessibility	)	
	)	
Petition for Waiver of Closed Captioning	)	
Requirements	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 21, 2005**

**Released: June 22, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission's rules,<sup>1</sup> implementing Section 713 of the Communications Act of 1934, as amended (the "Act"),<sup>2</sup> filed by LifePoints Ministries ("LifePoints") regarding its video program. Telecommunications for the Deaf, Inc. ("TDI"), National Association of the Deaf ("NAD"), The Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), and Self Help for Hard of Hearing People ("SHHH") filed a consolidated opposition to the petition for exemption, to which LifePoints filed a reply.<sup>3</sup> For the reasons discussed below, the petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.<sup>4</sup> In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.<sup>5</sup> Congress defined "undue burden" to mean "significant difficulty or expense."<sup>6</sup> When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner;

<sup>1</sup> 47 C.F.R. § 79.1.

<sup>2</sup> 47 U.S.C. § 613.

<sup>3</sup> TDI, NAD, DHHCAN, and SHHH argue that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

<sup>4</sup> *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("Report and Order").

<sup>5</sup> 47 U.S.C. § 613(d)(1).

<sup>6</sup> 47 U.S.C. § 613(e).

and (4) the type of operations of the provider or program owner.<sup>7</sup> A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.<sup>8</sup> Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.<sup>9</sup>

## II. DISCUSSION

3. In its petition, LifePoints asserts that its video program is a locally produced and distributed non-news program with no repeat value, pursuant to Section 79.1(d)(8) of the Commission's rules.<sup>10</sup> However, the Commission intended that the exemption for locally produced and distributed non-news programming with limited repeat value be a narrowly focused exemption. It is intended to apply only to a limited class of truly local materials, including, for example, local parades, local high school and other nonprofessional sports, live unscripted local talk shows and community theatre productions.<sup>11</sup> Moreover, the Commission concluded that the programming in question would have to be locally created and not networked outside of the local service area or market of a broadcast station.<sup>12</sup> In its opposition, TDI states that Lifepoints' website indicates that Petitioner's video program is distributed via the Daystar Television Network, which is shown in various markets across the nation.<sup>13</sup> In its reply, LifePoints contends that its video program is produced and televised locally.<sup>14</sup> However, LifePoints fails to explain sufficiently or provide support for its contention that the scope of its program relates only to local issues and that the program is truly local in nature. In light of the discrepancy regarding the extent of distribution of LifePoints' program, it is difficult to determine whether Petitioner's programming reaches beyond its locale.<sup>15</sup> Therefore, we are unable to determine whether the Section 79.1(d)(8) exemption applies here.<sup>16</sup> However, the option of an undue burden exemption still remains available if Petitioner makes the proper showing.

4. Section 79.1(f) requires a petition for exemption from the closed captioning requirements to demonstrate that compliance would cause significant difficulty or expense.<sup>17</sup> LifePoints indicates that it does not have the financial resources to absorb the cost of closed captioning.<sup>18</sup> It provides a projected profit and loss financial statement listing combined expenses totaling approximately \$456,000 and listing over \$370,000 in income received from contributions and products sales.<sup>19</sup> Based upon the information provided, LifePoints fails to establish that it cannot afford the expense of captioning, especially in view of the availability of financial resources from the ministries' budget. Moreover, funds could be distributed differently to provide for captioning. LifePoints also fails to provide information regarding possible

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<sup>7</sup> *Id.*; see also 47 C.F.R. § 79.1(f).

<sup>8</sup> 47 C.F.R. § 79.1(f)(2).

<sup>9</sup> 47 C.F.R. § 79.1(f)(3).

<sup>10</sup> Petition and Reply at 1.

<sup>11</sup> See *Report and Order*, 13 FCC Rcd 3272, 3348 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> TDI Opposition at 3, 10; see also NAD, DHHCAN, and SHHH Opposition at 2.

<sup>14</sup> Reply at 2.

<sup>15</sup> Adding to the uncertainty is fact that LifePoints fails to precisely identify that name of its programming at issue.

<sup>16</sup> See 47 C.F.R. § 79.1(d)(8).

<sup>17</sup> 47 C.F.R. § 79.1(f)(2).

<sup>18</sup> Petition at 1. Reply at 1-2.

<sup>19</sup> Reply, LifePoints Ministries Profit & Loss Statement at Exhibit B.

sponsorships solicited for assisting in captioning. Without such information, it is impossible for the Commission to determine whether LifePoints has sufficient justification supporting an exemption from the closed captioning requirements. Our decision herein is without prejudice to LifePoints bringing a future petition for exemption that adequately documents that compliance with our rules will impose an undue burden. Implicit in the Section 79.1(f) requirement of a showing as to the financial resources of a petitioner, such as LifePoints, is the question of the extent to which the distributors of its programming can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether LifePoints solicited captioning assistance from the distributors of its programming and the response to these solicitations. Absent such a petition, petitioner is given 3 months from the release date of this *Order* to come into complete compliance with the rules.

5. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED** to the extent indicated herein. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>20</sup> 47 C.F.R. § 0.283.